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IN THE SENATE OF THE UNITED STATES.

October 1, 1890.—Ordered to be printed.

Mr. Cockrell submitted the following

# MEMORIAL OF THE NATIONAL CONVENTION OF THE REPRESENTATIVES OF THE COMMERCIAL BODIES OF THE UNITED STATES IN FAVOR OF THE PASSAGE OF THE TORREY BANKRUPT BILL.

*OFFICERS AND CHAIRMEN OF COMMITTEES*

OF THE

National Convention of the Representatives of Commercial Bodies of the United States.

*Officers.*

President, Jay L. Torrey, St. Louis.
Treasurer, Peter Nicholson. St. Louis.
Secretary, James T. Wyman, Minneapolis.
Assistant Secretary, Francis J. McMaster, St. Louis.

*Committees.*

Presidential, James O. Broadhead, St. Louis.
Congressional, Lowe Emerson, Cincinnati.
Finance, William T. Baker, Chicago.
Bankruptcy Literature, Breedlove Smith, New Orleans.
Executive, William E. Schweppe, St. Louis.

St. Louis, *September* 27, 1890.

*To Congress:*

Your memorialist, the national convention of the representatives of commercial bodies of the United States, respectfully asks that you will at an early day pass the Torrey bankrupt bill, because its enactment and honest administration will benefit the whole people, and submit for your consideration statements in brief and at length as follows:

(1) The constitution confers on honest insolvents a right to have a bankrupt law enacted.

(2) Honest insolvents will be discharged; dishonest insolvents will be punished.

(3) A conservative tone will be given to transactions between debtors and creditors.

(4) Commercial credit will be extended and the prices of commodities reduced.

(5) The giving and receiving of preferences will be prevented.

(6) Fraud will be prohibited, and such persons as commit wrongs will be punished.

(7) Dishonest and insolvent debtors will be required to make a complete showing and a full surrender of their property.

(8) Creditors having claims of equal merits against bankrupt estates will receive pro rata dividends.

(9) The coercion of debtors by their large creditors, and of large by little creditors will be prevented.

(10) Voluntary and involuntary bankruptcy are necessary in the best interests of debtors and creditors.

(11) The estates of insolvents and dishonest persons will be quickly, economically, and equitably divided, without "fear, favor, or affection."

(12) The New Testament was revised. The present bill is an improvement on all former bankrupt laws.

(13) The rights of creditors and debtors as provided by the bill are an addition to those now enjoyed.

(14) The bill is a wise measure, both because of what it does and does not contain.

(15) The per centum of failures to those engaged in business was greater in 1889 than in 1879.

(16) A continuation of the prosperous condition of the country will be guaranteed.

## THE CONSTITUTION CONFERS ON HONEST INSOLVENTS THE RIGHT TO HAVE A BANKRUPT LAW ENACTED.

The provisions of the Constitution, pursuant to which Congress alone has a right to enact a bankrupt bill, is as follows:

> The Congress shall have power to establish * * * uniform laws on the subject of bankruptcies throughout the United States.

Honest insolvents have a constitutional right to demand that Congress shall exercise this power for their benefit.

Senator Henry Clay, in addressing the Senate in 1840 upon the subject of the then pending bankruptcy bill, spoke in reference to the rights of the honest poor man involved in debt as follows:

> Mr. PRESIDENT: Power and duty are often synonymous. The possession of the exclusive power to pass laws on the subject of bankruptcies by the General Government draws after it a high and responsible obligation and duty to the States, to the Union, and to the people, the performance of which that Government is not at liberty to elude or neglect.
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> The Declaration of American Independence, which announced our existence as a nation, solemnly proclaims, as a self-evident truth, that the right of any individual person to life, liberty, and the pursuit of happiness, is *inalienable*. Does the wretched bankrupt, sunk down and overwhelmed by perhaps unmerited misfortune, against which no human foresight or prudence could guard, enjoy the benefit of this maxim? He is not, indeed, deprived of life; but he drags out a miserable and lingering existence, without one cheering hope. The humanity of progessive civilization has exempted his person from incarceration in the dark cells of a public jail; but the liberty which is granted to him enables him only to see more distinctly, in the light of heaven, and intensely to feel, the misery of his condition. Stripped of all motives to human exertion, with the incubus of an immovable mass of debt upon him, surrounded by a family sharing without being able to alleviate his sorrows and sufferings, he is mocked by the privilege of the pursuit of happiness, pronounced to be inalienable in the most memorable declaration of human rights that was ever promulgated to the world. Let us, sir, make the guaranty substantial, practical, available, by fulfilling the duty imposed upon us in the power delegated in the Constitution to pass this law.

It does not seem possible that there can be two views as to the duty of Congress to enact a bankrupt law. If there are, the better view is that the duty to do so is plain and that it ought accordingly to be performed without delay.

## HONEST INSOLVENTS WILL BE DISCHARGED; DISHONEST INSOLVENTS WILL BE PUNISHED.

The bill makes ample provision for the discharge of honest insolvents from the amount of their debts over and above the amount paid in dividends from their estates, except such as are contracted in a fiduciary capacity.

A petition for a discharge must be filed after the expiration of two and within the next four months subsequent to the adjudication. If the petitioner can show to the satisfaction of the judge that he was unable to file his petition within that time he may file it within the next six months, but a petition can not be filed after the expiration of the first twelve months after the adjudication.

All of the creditors will be notified of the application for a discharge and will have an opportunity to appear in court and oppose it.

Discharges which have been fraudulently obtained may be revoked within two years after being granted.

Dishonest insolvents who have committed forbidden acts, upon conviction, will be punished by imprisonment not to exceed three years.

There are now no federal laws in force for the punishment of dishonesty perpetrated by the citizens of one State as against the citizens of another. There are in most of the States provisions calculated to prevent certain kinds of dishonesty, but they are notoriously inadequate, and such attempts as have been made for their enforcement have proven so ineffectual that they are for commercial purposes at least practically a dead letter.

The penalties provided by this bill for acts of dishonesty will, of course, be enforced in the courts having jurisdiction within the State where the offenses were committed.

These provisions of the bill will exercise a preventive effect upon the commission of wrongs, the value of which in a commercial sense can not be overestimated.

It is the duty of every man to amply provide for the necessities of himself and those dependent upon him. The laws of the several States do not protect him in the performance of his duty in this regard. He is therefore not infrequently led into the making of fraudulent transfers and of secreting property. If the bill in question were enacted his rights would be so clearly defined and the exercise of them so plainly provided for that there would not be in the first place occasion for such acts, and in the second place if he were inclined to do more than his duty he would be prevented by the restraining influence of the penalty provisions of the bill.

It is therefore submitted that the bill ought to be enacted to secure to honest insolvents their rights and do away with the incentive for wrong-doing, and to deter persons who are inclined to do wrong from so doing.

## A CONSERVATIVE TONE WILL BE GIVEN TO TRANSACTIONS BETWEEN DEBTORS AND CREDITORS.

Under existing State laws the creditor's rights are governed by forty-two different codes. Whenever a debtor having property in different States, fails, it is administered in different ways as provided under the laws of the State where it is situated. The variance of these laws, and the difficult questions that arise under them, are productive of great expense, which in the end is of course borne out of the debtor's prop-

erty. The uncertainty as to what the creditor's rights are of course renders him uneasy and necessitates that he should at all times be on the alert to prevent not only the loss of the amount due from the debtor by reason of the latter's wrong doing, but because the estate of the common debtor may be seized by some other creditor who will collect dollar for dollar and leave nothing for him. It is not an uncommon spectacle for a solvent debtor, who has become pressed without his own fault, to have his property disposed of at sacrifice sales in the struggle between his creditors, and he left with a great burden of indebtedness.

There ought to be, but is not, an opportunity for an honest man who has become involved without his own fault to fully and frankly disclose his condition to his creditors and leave it to them to say whether he shall pay a per centum upon his indebtedness, be forgiven the balance, and proceed with his business, or whether the estate shall be wound up and divided pro rata. If he attempted to do so in the present condition of the laws, his property would be at once attached by the more enterprising of his creditors. As soon as they thereby secured a lien for the amount of their indebtedness a compromise would be of course impossible. If, as the first step to the making of a compromise, there is a receiver appointed, or an assignment is made, it then becomes the small creditor who objects to anything like a compromise unless his claim is paid in full. Upon the passage of this law the taking of such an advantage will be prevented, and as a result the involved debtor can have a meeting of his creditors, with full assurance that if proceedings are instituted he can prevent an advantage being obtained by one creditor over another by going into bankruptcy and securing his own and the rights of all the creditors.

It follows therefore that a conservative tone will be given to dealings between debtors and creditors to their mutual benefit.

## COMMERCIAL CREDIT WILL BE EXTENDED AND THE PRICE OF COMMODITIES REDUCED.

The improvement or perfection of the law for the enforcement oft fair dealing between man and man always increases commercial credit between strangers. In the present complex relations of trade it is impossible for any dealer to know any considerable number of his customers. In turn it is practically impossible for even the smallest trader to know any considerable number of the people personally from whom he purchases his wares. It necessarily follows that the enactment of a law designed to enforce rules of equity in the dealings between these strangers in trade, begets in each of them confidence. The one will therefore be enabled to sell and the other to purchase upon a broader scale than heretofore, and just in proportion as the volume of trade increases the per centum added for profit will be reduced, and as a result the consumer of commodities can purchase them at a lower price.

The honest consumer is after all, the one most interested in securing the desired legislation. He it is who bears the burden of increased profits incident to prevailing dishonesty. The manufacturer and the wholesaler who offers his wares in a State where the laws are notoriously inadequate for their protection, must, in pursuance of the first law of nature, that is, self-preservation, add to the original profit an amount as security, or insurance if you please, against loss in that State. When the losses come he has collected the money in advance with which to pay them, and comes off therefore practically unharmed. The retail dealer does not pay the added profits of insurance, because

he in turn adds the additional amount paid to the amount charged to the customer, so that the amount is really paid by the honest solvent consumer. It therefore follows that the honest man is interested in proportion to the commodities consumed in enforcing honest dealing upon his neighbors, and upon the jobbers and manufacturer. The enactment of this law will readily enable him to do so to an extent that he has not heretofore been able to do on account of the notorious inadequacy of the State laws.

It is therefore respectfully submitted that the bill ought to be passed to the end that commerce may be increased between strangers in trade, and that the honest consumer may purchase needed commodities at the cost of production with a living profit added, instead of with the combined profit added as an insurance against dishonesty.

## THE GIVING AND RECEIVING OF PREFERENCES WILL BE PREVENTED.

The fact that under most of the State laws preferences may be given furnishes the creditors with the right to demand them and enables the strong creditor to coerce the weak debtor into giving them, which amounts to the paying of the debt of one creditor and not paying the debt of another who has equal equities to be paid. If preferences were forbidden the creditor would not have a right to demand their giving, and as a result the terror of the demand would be entirely removed so far as the retailer is concerned.

It is not an infrequent practice among houses, and particularly among those situated in different States which sell goods in a common territory to unload their weak customers on other houses and when they have secured a stock of goods secure a preference and thereby collect dollar for dollar of their indebtedness. For example, a house in A has a customer in X who has fallen behind, and could not upon enforced liquidation pay 50 cents on the dollar. The customer goes to the house in B to purchase goods and gives as a reference the house with whom he formerly dealt. In reply to the letter of inquiry the house in A says that the customer formerly dealt with it and is considered honest and industrious. The new customer is thereupon given a line of credit. When the stock has been replenished the creditor who does business at A takes a bill of sale at an estimated valuation of the property and cancels its indebtedness. If the customer is able to secure a compromise at a small figure the A house considerately furnishes the cash, and then appoints the customer the manager of the business, sells the goods at their real value, and as a result has realized enough to re-imburse it for the original amount and for the advance made to compromise with the B creditor, who, in fact, furnished the merchandise to make good the losses of the A house in previous years. It is an unfortunate fact that this effect is reached in various forms all over the country from day to day.

Is swindling as above outlined right? Ought it to be tolerated? Ought there not be a law to prevent wrongs of this nature and enable the creditor to collect and the debtor to pay a pro rata of his indebtedness to all of his creditors in the event he can not pay the whole amount? If so, this bill ought be enacted.

## FRAUD WILL BE PROHIBITED, AND SUCH PERSONS AS COMMIT WRONGS WILL BE PUNISHED.

The pending bill contains very carefully drafted sections which forbid, under severe penalties, the perpetration of fraud. The State laws upon these subjects are practically for commercial purposes dead letters. The acts forbidden in these sections are for the most part perpetrated from day to day the year around, and yet when it is proposed to enact a bankrupt law of which these sections are a conspicuous part, there are two classes who shout no! The one class is made up of criminal lawyers who have battled against laws to prevent and punish crime until it has become second nature with them to rail against criminal laws as "a curtailment of the liberties of the people." It is confidently anticipated that this bill will effectually curtail the liberties of those persons who commit fraud. The other class is made up of thoughtless persons, who during the existence of a bankrupt law, attribute the commission of fraud and wrong-doing to the fact of there being such a law in force, instead of to the immorality of the perpetrators.

The situation is fairly outlined by questions and answers as follows:

Q. Is fraud and crime perpetrated nowadays?—A. It is.

Q. Has it been every day since the repeal of the old law?—A. It has.

Q. Will it be after the enactment of this bill?—A. It will be, in spite of the pains and penalties prescribed, but will be greatly reduced because the bill hasb een very carefully framed with that end in view.

Q. Who will be materially injured by the passage of these sections to prevent and punish fraud and corruption?—A. Thieves.

Q. Who will be materially benefited by their passage and enforcement?—A. The dependents of would-be thieves, who suffer more than the thieves do during the infliction of punishment; the honest consumer who has to pay in multiplied profits for the amounts stolen by thieves; the honest trader who has to meet the competition of fellow-traders who are thieves, and the honest members of society at large who are directly and indirectly injured and outraged by the wrongs perpetrated by thieves.

The class that will be injured by the passage of the penalty provisions is not entitled to the consideration of Congress; the class that will be benefited is, and we therefore ask that the bill be passed.

## DISHONEST AND INSOLVENT DEBTORS WILL BE REQUIRED TO MAKE A COMPLETE SHOWING AND A FULL SURRENDER OF THEIR PROPERTY.

Dishonest men are of course dishonest in their statements, unsupported by oath, made to their creditors. Insolvent debtors are usually at least deceitful upon the same subject. To guard against impositions upon creditors the bill has provided that the bankrupt must file a schedule of assets and list of creditors under oath, and has made provisions that in the event facts are willfully misstated the bankrupt shall be punished.

In addition to the filing of the schedule and list as above the bankrupt must submit to an examination at a meeting of his creditors or in open court. Other persons who are competent witnesses may also be examined touching their knowledge in open court or before a designated officer upon the order of court.

The title of the bankrupt to his property vests in the trustee upon his appointment by the creditors as of the date of the filing of the petition. The title of the bankrupt to all the property which has been fraudulently transferred vests in the trustee. All conveyances which have been made by the bankrupt in fraud of his creditors may be set aside upon proceedings instituted by the trustee. Property which has been transferred as a preference, or its value may be recovered by the trustee for the benefit of the creditors.

Under existing laws the bankrupt is not required to make an adequate showing, nor is there a general belief that a full surrender is made, in a large number of failures.

It is respectfully submitted that under the provisions of this bill the showing will be complete, and that there will be a full surrender of property.

## CREDITORS HAVING CLAIMS OF EQUAL MERIT AGAINST BANKRUPT ESTATES WILL RECEIVE PRO RATA DIVIDENDS.

Persons holding claims of the same class against the estates of deceased persons the world over receive a pro rata dividend upon proof of their claims. Courts of equity have from time immemorial directed trustees of funds against which there were claims of equal merit to pay them pro rata. There are adjudicated cases in which the directors of insolvent corporations have been held to be trustees of their estate for all of the creditor's pro rata. Why should not these rules be applied to the every-day mercantile transactions when a mercantile death occurs?

This bill provides for the payment of dividends pro rata to creditors of the same class; its enactment would increase confidence between members of the mercantile world, enlarge credits, prevent men in straitened circumstances from having their business destroyed by a contest between creditors for enforced preferences, and in all respects redound to the general good.

It is therefore respectfully submitted that the bill ought to be passed because it will enable creditors having claims of equal merit to receive pro rata dividends.

## THE COERCION OF DEBTORS BY THEIR LARGE CREDITORS, AND OF LARGE BY LITTLE CREDITORS, WILL BE PREVENTED.

It will not be denied by any well-informed person that debtors under the present law are frequently coerced by their large creditors into the giving of preferences, the making of fraudulent bills of sale and sham conveyances, to the detriment of at least their other creditors. This result is possible only because the debtors have no adequate remedy against compulsory process on the part of their large creditors, and must therefore yield to their importunities to do wrong.

There is a species of coercion in addition to that above named on the part of little as against large creditors. In the event of a failure the creditor who has a claim for but a small amount can, and not infrequently says to the larger creditors that their claims are for sale, and that they will not consent to any terms of compromise, but insist upon payment dollar for dollar. Under the provisions of the present laws there are no adequate means for preventing this kind of coercion. It is useless to argue with the small creditor, as he has but a petty money interest and proposes to inflict a large loss upon the less fortunate cred-

itors who have claims for larger amounts, or collect the whole amount due to him.

To enact the present bill will be to strike a death-blow to both of the above classes of coercion. They are both pernicious, ought not to exist, and the sooner they are ended the better for the mercantile world.

## VOLUNTARY AND INVOLUNTARY BANKRUPTCY ARE NECESSARY IN THE BEST INTERESTS OF DEBTORS AND CREDITORS.

Debtors are vitally interested in the enactment of the involuntary features of the bill. If the involuntary provisions were stricken out and the voluntary provisions were enacted the result would be that most of the debtors in the whole country would be forced into liquidation. Such an enactment would practically impair the general credit of all persons, as it would give to every debtor an opportunity to deliberately put his assets out of his hands, go through bankruptcy, swindle his creditors, and "renew business at the old stand." Honest men do not want any such opportunity; dishonest men ought not to have it. All of the scandals that arose under the old law were under the voluntary features of it. It is not possible to prevent the voluntary law from being occasionally taken advantage of by unscrupulous persons even when the involuntary law is also in force. It would be infinitely worse if the involuntary features were omitted, as the rascal could then deliberately prepare for his fraudulent mercantile death without the possible interference of his creditor.

The relationship of debtor and creditor is mutual and reciprocal; it is voluntarily entered into by both parties. It is impossible to force a man to become either a debtor or a creditor. Each transaction creates members of each class. The claim of the creditor is exactly equal in amount to the debt owed by the debtor; the result is, that the aggregate amount due to creditors is exactly equal to the amounts due by debtors. Should a law be enacted which would favor the members of one of these classes to the detriment of the other? Most assuredly not.

The man of affairs belongs to both classes; ought he in his capacity as a debtor to have rights without having at the same time reciprocal rights in his capacity as a creditor? No.

There never has been in existence a voluntary bankrupt law. Hundreds of commercial bodies in all parts of the country have passed resolutions in favor of this law, but not one such organization has asked for a voluntary system of bankruptcy. Great numbers of citizens have petitioned for the enactment of this bill, but none of them have ever expressed a wish for simply a voluntary law. Many persons have protested against the passage of any law at this time, and some of the same persons have withdrawn their protests and petitioned for the early passage of the bill; but the wish has always been for both the voluntary and involuntary systems or for none at all.

The men of this country are fair minded. They are willing to give and to take by the same rule. They do not want a one-sided law; they either want a two-sided one or none at all.

It is therefore respectfully submitted that the interests and petitions of all classes demand the enactment of both the voluntary and involuntary systems of bankruptcy.

ESTATES OF DISHONEST AND INSOLVENT PERSONS WILL BE QUICKLY, ECONOMICALLY, AND EQUITABLY DIVIDED, WITHOUT "FEAR, FAVOR, OR AFFECTION."

Every business man is interested in knowing the value of his claims against estates and in realizing the amount as soon as possible. His prosperity depends upon his capital available, and it is therefore injurious to his business to have it tied up in endless litigation or in claims against estates which are not promptly administered.

The bill under consideration provides for a prompt return of process issued in bankruptcy proceedings, in a prompt hearing, and the early determination of all of the rights of the parties interested in the controversy. If a composition is desired, the question can be determined without delay. If administration is necessary, the powers of the court are ample to require prompt action. Every officer is interested in a financial way in closing up the estate and distributing the proceeds in dividends as soon as possible; that is, the clerk receives his compensation in advance, and will therefore desire to be relieved from the rendition of any services in the case as soon as possible. The referee will receive a $10 fee per case as soon as it is concluded and the records are returned to court, and will therefore seek to reach the end as soon as possible. The trustee is the representative of the creditors, and the person appointed by them to protect their interests. He is paid only a commission, which is computed upon the dividends actually paid to the creditors. He therefore is interested in having the dividends as large and payable as early as possible and the expenses as small as is consistent with the proper administration of the estate. The creditors are, of course, the beneficiaries in the speed and economy in the settlement of the affairs of the debtor. The restrictions imposed upon these officers will prevent them from yielding in any respect to "fear, favor, or affection."

The law as petitioned for, if enacted and enforced, will be of great aid to commerce, because the administration of bankrupt estates will be speedily obtained at small cost.

THE NEW TESTAMENT WAS REVISED.—THE PRESENT BILL IS AN IMPROVEMENT ON ALL FORMER BANKRUPTCY LAWS.

The opponents to the proposed legislation, who give as their sole reason for opposition the fact that the three bankrupt laws heretofore in force in the United States have been repealed, should not forget that the New Testament was advantageously revised. It should also be remembered that there have been amendments to the Constitution of the United States.

All of the constitutions of the several States, except the new ones, and all of their statutory law, and all of the statutory law of the United States have been from time to time amended and revised. It is therefore not surprising that there should have been amendments to the bankrupt law of this country. The public-spirited citizens who are conducting this agitation are not of that class of theoretical dreamers who believe that the law they advocate is of necessity perfect, but they do know that it has been drafted in the presence of all of the precedents in the world and that it is an honest endeavor in the right direction. At the beginning of the movement ten thousand copies of the bill were printed and distributed, and criticism invited. Many valuable ones were received, and such wisdom as they contained has been embodied in the

bill. The author of the bill has said from the beginning of the agitation, and still says, that the wisdom of any criticism which cannot be answered will be embodied in the bill.

There never has been and is not now any end to be accomplished by the movement other than the enactment of a wise and perfectly fair law. There has not been in the whole course of the movement any covert acts, nor the securing of results by indirection, nor does the bill contain a single section in which there is a covert or double meaning. In other words, the agitation is not prompted from a selfish standpoint, but wholly in the interests of all the people.

There is a certain class of theorists who frankly admit that bankrupt laws are necessary, say once in a decade, or after some great public panic or calamity, to enable the wrecks to be cleared away. It is respectfuliy submitted that if the law is necessary to clear away a great accumulation of wrecks, that for the same reason it is necessary to clear away the individual wreck. That is to say, the aggregate number of wrecks are after all but an accumulation of single ones, and since the law operates not upon the group together, but upon the individual singly, it is quite as important to the individual that has suffered a wreck at any time to have an opportunity to make a fresh start as it would be if he had been wrecked at the time a large number of others were wrecked.

It is therefore submitted that an approximate perfection can only be attained by repeated trials, and that the only way to secure a permanent and desirable bankrupt law is to enact one and thereafter amend it from time to time as occasion may require.

## THE RIGHTS OF CREDITORS AND DEBTORS AS PROVIDED BY THE BILL ARE IN ADDITION TO THOSE NOW ENJOYED.

It is not proposed to take away from the creditor a right to institute any proceeding which he is now entitled to institute against his debtor, nor is it proposed to deprive any defendant from making his defense as against any proceeding which may be instituted by the enactment of the proposed legislation.

Under the last law certain claims could not be proved as against a bankrupt estate. The effect of this provision was that men were not infrequently thrown into bankruptcy for the purpose of enabling creditors of a certain class to divide as between themselves the entire estate, while creditors of other classes were not permitted to share in the dividends. But under the present law, all claims of every kind and description which constitute a legal liability may be proven as against the estate. If they are unliquidated claims they must be liquidated as directed by the court before they can be proved, but in the end there is no distinction.

The creditor of to-day, irrespective of the kind of claim or the amount involved, may institute proceedings as against a debtor without let or hindrance. Proceedings in bankruptcy as proposed can not be instituted by a less number than three persons if the creditors are more than twelve in number, who together have aggregate claims in excess of securities held of $500 or over. If the creditors are twelve or less in number, one person, who holds a claim of the same amount or over in excess of securities held, may institute proceedings. The purpose, of course, of these restrictions is to prevent so far as possible the improvident institution of proceedings. It certainly is a safeguard in behalf of the debtor, and is a complete answer to the argument of the oppo-

nents of the law that it is possible for the rich and powerful to oppress the weak. The institution of a suit against a debtor for a petty amount is frequently of great detriment to him, and in a large percentum of cases precipitates litigation which results in the financial destruction of the business of the defendant. In many of the courts of the country a prompt trial can not be had, and as a result, suits, the very existence of which is a great injury to the defendants, can not be brought to trial for a long period of time.

According to the terms of this bill, process will be returnable in fifteen days. The answer can be filed within five days thereafter, and in ordinary course the issues will be made up and the defendant entitled to a trial as to the cause of bankruptcy, alleged at the expiration of the twenty days. The defendant is entitled to a trial by jury, as of course upon application, and in all respects will have an opportunity to be heard in his defense with like force and effect as in other cases.

During the pendency of proceedings the defendant's property will not be disturbed nor taken charge of unless it shall be shown to the court that there is necessity therefor in behalf of the best interests of the creditors, and unless a bond shall be given to indemnify the defendant in the event the action is not sustained. And even after the giving of such bond, the defendant may, if he desires, give a counter-bond conditioned for the production of the property or its value in the event of adjudication.

Creditors might complain of the proposed legislation if it deprived them of their rights or cut them off in their remedies, and debtors might resent its passage if they were thereby placed at an arbitrary disadvantage as against their creditors; but since both of them are to be benefited they are both necessarily interested in the early passage of the bill.

## THE BILL IS A WISE MEASURE, BOTH BECAUSE OF WHAT IT DOES AND DOES NOT CONTAIN.

The language used in the bill is plain and concise. It can be readily understood by persons of the most rudimentary scholastic attainments. The provisions are analytically arranged. Each subject is embraced within a chapter, and each idea is placed in a section to itself and given a serial number, and a catch word or title. There is no duplication of statements of what the law is on a given subject. It is fully and clearly stated in a section to itself, and will not be found restated anywhere else in the measure.

The most conspicuous precedents for the authors of our former laws upon the subject were the English acts. Those acts were not safe precedents because of the difference between the form of government in England and the United States. All subjects are legislated upon by one tribunal in that country, and, as a result, all of the statute law might be consolidated under the heading of bankruptcy and no harm would result; but, in this country, where State legislatures have sole power to legislate upon certain subjects, and a national legislature in turn has certain exclusive powers, such a consolidation is impossible. It therefore follows that our law upon the subject must be confined to certain limits.

The trouble with all of our preceding laws has been that they were too comprehensive; they embodied subjects not proper to be legislated upon by Congress. They interfered with satisfactory State legislative enactments and wise judicial decisions of the State judiciary, and in

those respects were hurtful, and the whole of the measures were therefore repealed instead of being circumscribed.

The rules of proceedure in bankruptcy cases ought to be the same as in others, with perhaps the single exception of requiring greater expediency. Under the law of 1879 appeals were specially provided for, and in addition thereto there was a supervisory control of the circuit over the district court. The result was great annoyance to the bar, enormous expense to litigants, and consequent dissatisfaction with the law.

State laws, which are in effect bankrupt laws, will of course be superseded by such laws as Congress may enact pursuant to the sole power reserved to it by the Constitution; but State laws, which are not in the strictest sense bankrupt laws, must not be interfered with.

A bankrupt law, in order to be a permanent one, must be susceptible of being inlaid, if you please, with existing laws upon kindred and other subjects. If it is not, if it is lapped over and embraces subjects already properly provided for by the State laws and decisions there will be engendered an agitation that will eventually secure its repeal.

A reading of the present bill will disclose the fact that it embraces fewer subjects than former ones, and is still comprehensive of the subject.

The bill may therefore fairly be considered meritorious because of what it does as well as what it does not contain.

## THE PER CENTUM OF FAILURES TO THOSE ENGAGED IN BUSINESS WAS GREATER IN 1889 THAN IN 1879.

The necessity for a stable and equitable law, especially in the West and South, is shown by the increased numbers of commercial failures in the last eleven years, *i. e.*, since the repeal of the old law. The statistics show that the per centum of failures has greatly increased, and the conclusion is irresistible that it is due largely to the fact that under existing laws the rights of those who are in debt are not properly guarded; that an opportunity for and the practice of fraudulent preferences and kindred wrongs are not after all in the best interest of a healthy commerce.

In Alabama in 1879 there were 24 failures; the number engaged in trade was 5,483; the per centum of failures was therefore .44. In 1889 the number of failures had increased to 134 and the number engaged in business to 9.886. The per centum was 1.35.

In Arkansas the number engaged in mercantile pursuits has more than doubled in the last eleven years. The per centum of failures has increased from 1.10 in 1879 to 1.82 in 1889.

In Colorado the number of business enterprises has increased in the eleven years from 3,572 to 11,580. The number of mercantile deaths in the same time has increased from 47 to 165. The per centum was, therefore, in 1879, 1.31, and in 1889, 1.42.

In Dakota (North and South) the increase in per centums has been from .69 to 1.25 in the same period.

The per centum in Florida was 1 in 1879; the next year it fell to .60; the year afterwards it was .61, and in 1889 it had increased to 1.03.

Georgia's showing in 1879 was the same exactly as Florida's; that is, 1. The next year it fell to .79, but in 1888 it had increased to 1.09, having in 1885 and in 1886 reached 2.04.

In Illinois the per centum in 1879 was .54; 1880, .25, and in 1881, .26.

The figures reached in 1884 was 1.37. For the two years just passed the per centum has been .95.

In Indiana the traders increased from 27,285 in 1879 to 40,164 eleven years after. The per centum of failures has, however, increased in the same time from .45 to .53. During the whole time the per centum did not for any one year equal 1.

Iowa shows an increase of from .65 to .96.

Kansas has run from .58 to 1.17 in the same period. The total liabilities in 1889 of those who failed reached $2,629,209, or almost twice as much as for any preceding year within the eleven.

Kentucky makes a showing of an increase in traders from 17,542 in 1879 to 22,706 in 1889, while the number of failures has run from 138 to 223, the per centum being from .79 to .98.

Louisiana's mercantile death-rate was 1.14 in 1879, the year afterwards it fell to .64, but in 1889 had reached 1.49.

Maryland has gone from .66 to .70 in the same period.

Minnesota has varied from 1.27 in 1879 and .73 in 1880 to 1.20 in 1880 and 1.91 in 1889.

Mississippi showed failures of 1.34 in 1879, a decrease to .89 the year afterwards, and an increase in 1888 to 1.51, and last year to 1.57.

Missouri ranged from .44 to .69, but never did reach 1.

Montana has increased from .58 to 1.21.

Nebraska has a record of an increase of only the difference between 1.25 and 1.30 in that time.

North Carolina suffered in 1879 to the extent of 1.43; in 1880 .74, and in 1889 to 1.84.

Texas makes a showing of 1.28 in 1879, 2.77 in 1886, 2.63 in 1887, 2.74 in 1888, and 1.65 in 1889.

Virginia's per centum has been .80 in 1870 and 1.20 in 1889.

West Virginia has increased in the eleven years from .47 to .84.

Statistics for the whole country show that the per centum has increased from .95 in 1879 to 1.04 in 1889.

## A CONTINUATION OF THE PROSPEROUS CONDITION OF THE COUNTRY WILL BE GUARANTEED.

The prosperity of the country rests to a great extent in the confidence of men in each other. There is no element that so far begets and supports such confidence as a knowledge that there are such laws as will prevent such confidence being violated, and in the event it is attempted will furnish such persons as have been wronged a complete remedy.

There is always great danger that when any one of a series of business concerns intimately connected becomes involved all of them will be ruined, notwithstanding they may be unquestionably solvent. This danger arises from a want of knowledge on the part of the creditors as to their real condition, and the fear that some other creditor will begin proceedings first and thereby secure the entire amount due. The result is great harm to the debtor and creditors.

It is therefore of the utmost importance that there should be in existence a uniform, equitable law for the adjustment of difficulties in the event of trouble. The presence of such a law will do more than any other one thing to prevent a panic.

## IN CONCLUSION.

The bodies which have been reported as favorable to, and persons who have petitioned for the enactment of, a bankrupt law, and the individuals who are members of the organization which has been formed to promote the agitation, are summarized by States and Territories as follows:

| | Bodies and petitioners | Officers and committeemen. | | Bodies and petitioners | Officers and committeemen. |
|---|---|---|---|---|---|
| Alabama | | 7 | Nebraska | 5 | 3 |
| Arkansas | 6 | 8 | New Hampshire | 3 | 0 |
| California | 5 | 5 | New Jersey | 4 | 2 |
| Colorado | 2 | 4 | New Mexico | 1 | 1 |
| Connecticut | 3 | 1 | New York | 24 | 18 |
| Delaware | 1 | 1 | North Carolina | 2 | 2 |
| District of Columbia | 1 | 0 | North Dakota | 1 | 3 |
| Florida | 2 | 3 | Ohio | 16 | 22 |
| Geo gia | 4 | 6 | Oregon | 3 | 4 |
| Illinois | 14 | 21 | Pennsylvania | 10 | 12 |
| Indiana | 2 | 4 | Rhode Island | 4 | 2 |
| Iowa | 7 | 11 | South Carolina | 1 | 2 |
| Kansas | 3 | 4 | South Dakota | 1 | 1 |
| Kentucky | 4 | 11 | Tennessee | 5 | 2 |
| Louisiana | 8 | 10 | Texas | 12 | 4 |
| Maine | 6 | 1 | Utah | 0 | 2 |
| Maryland | 3 | 2 | Vermont | 0 | 7 |
| Massachusetts | 19 | 11 | Virginia | 4 | 2 |
| Michigan | 11 | 11 | Washington | 3 | 1 |
| Minnesota | 17 | 17 | West Virginia | 3 | 3 |
| Mississippi | 2 | 3 | Wisconsin | 5 | 9 |
| Missouri | 15 | 27 | | | |
| Montana | 2 | 1 | Total | 245 | 273 |

The movement in behalf of this measure is non-sectional and non-political, as will appear from the above table. It is not in the interest of any class, but for the benefit of all classes. The expenses of conducting the agitation have not been borne by men engaged in a particular calling or living in a particular State, but have been paid out of petty voluntary subscriptions by men in all callings and in all of the States.

It is respectfully submitted that the measure is entitled to an early hearing by Congress and that it ought to be passed.

For the executive committee,

WM. E. SCHWEPPE,
*Chairman.*